

2

Supreme Court, U.S.

FILED

OCT 20 1993

OFF.

CLERK

No. 93-445

In the Supreme Court of the United States

OCTOBER TERM, 1993

LENARD RAY BEECHAM AND KIRBY LEE JONES,
PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

BEST AVAILABLE COPY

5 p

In the Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-445

LENARD RAY BEECHAM AND KIRBY LEE JONES,
PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

Petitioners contend that the federal firearms charges against them were unfounded because state statutes restoring their civil rights eliminated the restriction on their right to possess firearms. Pet. 7-11.

1. Petitioner Beecham was indicted by a federal grand jury sitting in the Eastern District of North Carolina. He was charged with five counts of being a felon in possession of a firearm, in violation of 18 U.S.C. 922(g)(1); one count of making a false statement in connection with the purchase of a firearm, in violation of 18 U.S.C. 922(a)(6); and five counts of dealing in firearms without a license, in violation of

18 U.S.C. 922(a)(1)(A). The felon-in-possession and false statement counts alleged that he had a prior federal felony conviction in the Western District of Tennessee. Following a jury trial, Beecham was convicted on all counts. Pet. App. 2a-3a.

On January 24, 1992, the district court granted a post-verdict judgment of acquittal on the false statement and felon-in-possession counts on the ground that the State of Tennessee had restored Beecham's civil rights after the completion of his federal sentence and that the State's act had the effect of making the federal felony conviction unavailable, under 18 U.S.C. 921(a)(20), as a qualifying "prior felony conviction" for purposes of the federal firearms laws. Pet. App. 5a.

2. Petitioner Jones was indicted by a federal grand jury sitting in the Northern District of West Virginia. He was charged with being a felon in possession of a firearm, in violation of 18 U.S.C. 922(g)(1), and with making a false statement in connection with the purchase of a firearm, in violation of 18 U.S.C. 922(a)(6). The indictment alleged that he had a prior federal felony conviction in the Southern District of Ohio and prior state convictions in West Virginia. Pet. App. 11a-12a.

The government conceded in the district court that the state convictions could not serve as predicate felonies under 18 U.S.C. 921(a)(20) because West Virginia had restored Jones's civil rights upon the completion of his sentences. The government contended, however, that the federal conviction remained a viable predicate conviction under the federal firearms laws. Pet. App. 12a.

On November 4, 1992, the district court dismissed the indictment. Accepting the recommendation of the magistrate, Pet. App. 25a-30a, the district court ruled that Jones's federal conviction did not qualify as a conviction within the meaning of the federal firearms laws because West Virginia had restored his civil rights. Pet. App. 10a.

3. The court of appeals reversed the judgment of acquittal in *Beecham* (Pet. App. 1a-9a) and the order dismissing the indictment in *Jones* (Pet. App. 10a-22a). The court recognized that its ruling conflicted with *United States v. Geyler*, 932 F.2d 1330 (9th Cir. 1991), and *United States v. Edwards*, 946 F.2d 1347 (8th Cir. 1991), but it nevertheless concluded that Congress intended for a State's post-conviction restoration scheme to affect only the rights of persons convicted in that State's courts. Pet. App. 14a.

4. Petitioners contend (Pet. 7-11) that 18 U.S.C. 921(a)(20) allows an individual convicted of a federal felony whose civil rights are restored by operation of state law to possess firearms lawfully. They note that the court below recognized that the decisions against them conflict with the Eighth and Ninth Circuits' decisions in *Edwards* and *Geyler*.

Although we believe that the court below correctly determined that petitioners could not possess firearms lawfully, we agree that the courts of appeals are divided, and that the issue is one that will ultimately merit review by this Court. However, because both of these cases are in an interlocutory posture, we suggest that neither case is ripe for review at this time. The court of appeals' decision places each petitioner in precisely the same position he would have occupied if the district court had denied relief. After

imposition of sentence, petitioner Beecham can take an appeal to the court of appeals raising any issues that may be available to him and preserving the claim that he raised here. If petitioner Jones is convicted following a trial on the merits, he also can appeal to the court of appeals raising any issues that may be available to him. Either petitioner whose conviction is affirmed on appeal will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review of the court of appeals' decisions at this time would be premature.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

OCTOBER 1993

* Because both of these cases are in an interlocutory posture, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.